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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,997	04/17/2006	Richard L. Schuster	R029 1410.3	8940
26158 7590 04/17/2008 WOMBLE CARLYLE SANDRIDGE & RICE, PLLC ATTN: PATENT DOCKETING 32ND FLOOR P.O. BOX 7037 ATLANTA, GA 30357-0037				
EXAMINER				
ELKINS, GARY E				
ART UNIT		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/575,997

**Applicant(s)**

SCHUSTER, RICHARD L.

**Examiner**

Gary E. Elkins

**Art Unit**

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4-20 and 36-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-20 and 36-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Double Patenting***

1. The terminal disclaimer filed 11 December 2007 has been approved. The double patenting rejection has therefor been withdrawn.

### ***Claim Rejections - 35 USC § 112***

2. Claims 4-20 and 36-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The following are each a double inclusion of an element insofar as the element is being reintroduced into the claims: claim 4, lines 8, 13 and 23, "at least one top end flap", "side end flaps" and "securing means", claim 5, lines 8, 12 and 23, "at least one end flap", "aligned apertures in the side end flaps" (see lines 9 and 10) and "securing means", claim 6, "securing means", claim 9, "at least one side panel", claim 12, "one top end flap", claim 15, "glue" (securing means previously defined in claims), claim 17, lines 2, 3, 5 and 6, "a dispenser flap" and "a dispenser flap", claim 19, last two lines, "a flap in the insert", claim 36, lines 8, 12, 16, 17 and 24, "at least one top end flap", "side end flaps", "a first end", "a second end" and "a handle aperture", claim 38, "securing means" and "a handle aperture", claim 39, "securing means", claim 40, "securing means", claim 43, "at least one side panel", claim 45, line 2, "two flaps" and claim 46, "one top end flap".

The following are each unclear insofar as claims 4 and 5 define "a handle aperture in at least one top end flap": claim 4, lines 10-12, 15-17, 20, 21 and 24, "said top end flap having an aperture", "the handle aperture in said top end flap", "a handle aperture in said top end flap", "the

top end flap with a handle aperture” and “said handle aperture” and claim 5, same recitations.

The claims are defining one or more handle apertures. The recitations are referring back to only one aperture in one top end flap.

In claim 8, “each insert” is unclear insofar the phrase is implying that more than insert was previously defined. Claim 5-7 previously defined a single insert.

In claim 13, “the corresponding handle aperture in each top end flap” lacks antecedent basis in the claims insofar as each top end flap in claims 5 and 12 were not previously defined as necessarily including a top end flap.

In claim 20, line 3, “the flap in the insert” is unclear since a plurality of flaps were previously defined in the insert (see claim 17, line 4).

Claim 36 is unclear with respect to how many handle apertures are being defined in the respective top end flaps. Lines 17 and 18 define the first and second ends of the carton as having a handle aperture in said top end flap which appears to be claiming more than one handle aperture since both of the ends are being referred to. However, in lines 19, 20, 23 and 24, “the handle aperture in said top end flap” and “the top end flap with a handle aperture” and “said handle aperture” are referring to a single handle aperture. Also, claim 36 is indefinite for the same reasons as set forth with respect to claims 4 and 5 above.

In claim 36, lines 20 and 21, it is unclear how a person’s hand can be inserted through all aligned apertures if apertures are present on both sides of the carton, i.e. it would appear that a person's hand can only extend through one end at a time.

In claim 38, "on the first end and second end of the carton having a handle aperture in said top end flap" is unclear insofar as the first and second ends do not include a single handle aperture in a single top end flap.

In claim 39, last line, "said top end flap" is unclear since a plurality of top end flaps were previously defined.

In claim 42, "the corresponding handle aperture in the top end flap" is unclear insofar as a single top end flap does not include more than one corresponding handle aperture, i.e. the phrase appears to intended to set forth ---the corresponding handle aperture in a respective one of the top end flaps---.

#### ***Response to Arguments***

3. Applicant's arguments with respect to claims 4-20 and 36-46 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Allowable Subject Matter***

4. Claims 4-20 and 36-46 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

#### ***Conclusion***

Any inquiry related this office action or any other office action for this application should be directed to Examiner Gary Elkins at the number listed below. Normal work days are Mon-Thur. each week.

If the Examiner is unavailable and you need to talk to someone sooner, the Examiner's supervisor, Mr. Nathan Newhouse may be contacted at the number listed below.

Any inquiry of a general nature or relating to the status of an application should be directed to the 3700 Technology Center Receptionist. Information regarding the status of an application may also be obtained by accessing the PAIR system. Information about the PAIR system can be obtained at the website <http://pair-direct.uspto.gov> or by contacting the EBC at (866) 217-9197 (toll free).

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Art Unit: 3782

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